IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

SB CIVIL WRIT PETITION NO.2870/1994
Balbir Singh V/s The State of Rajasthan & Ors.

DATE OF ORDER : : : 8.1.2007

PRESENT
HON'BLE MR. JUSTICE PREM SHANKER ASOPA

Mr.M.C. Jain, for the petitioner.
Mr.Shyam Arya, GA, for the respondents.

By this writ petition, the petitioner has challenged the order dated 17.7.1990 passed by the Commandant, RAC whereby the order of reinstatement dated 23.3.1990 has been cancelled by considering the fact that earlier order dated 15.3.1990 of DIG, RAC in appeal has been withdrawn vide order dated 30.6.1990, being contrary to Rule 22 (d) of Rajasthan Service Rules, 1951 (hereinafter to be referred as “the Rules of 1951”).

2. The facts, in brief, of the case are that the petitioner was appointed as Constable in RAC Range on 16.10.1978 after due process of recruitment. Some allegations of misconduct were levelled against the petitioner in the year 1989 to the effect that a criminal case was lodged against him for the offence

under Section 323 IPC and another allegation levelled against him was that the petitioner left the duty on 2.11.1989 without permission of his superior officer with 50 live cartridges.

3. Further case of the petitioner is that he was pressurised to give resignation on the threat of handing over him to the police. The said resignation was given to the Assistant Commandant `F' Company on 12.11.1989 and the same was accepted on 27.11.1989. The petitioner was relieved on 30.11.1989.

4. The petitioner thereafter submitted an appeal to the Deputy Inspector General of Police, RAC Range, Jaipur and the same was accepted on 15.3.1990 on the ground that the resignation was taken after undue pressure without considering the fact that the petitioner has completed 12 years of service. The appellate authority while dealing with the appeal held that as per Rule 23-A (2) of the Rules of 1951, the petitioner was entitled for three month's notice and if there was any allegation then disciplinary action should have been taken. In compliance to the said order, the petitioner was reinstated on 23.3.1990. Thereafter, an order was passed by

D.I.G. RAC on 30.6.1990 whereby the order dated 15.3.1990 was withdrawn being contrary to decision No.(d) of Rule 22 of the Rules of 1951, but neither any notice nor any opportunity was given to him despite the fact that he was reinstated and working from 23.3.1990.

5. The Government has filed reply and justified its action on the ground that resignation once accepted, cannot be withdrawn subsequently. The Government Advocate has also produced photo copies of the record before me. In reply also, the Government Advocate has not denied the fact that neither any notice nor any opportunity was given and it was submitted that principle of natural justice are not applicable.

6. Submission of counsel for the petitioner is that the present case is not a case of withdrawal of resignation but the same was of taking resignation under pressure by the competent authority, as decided by the appellate authority vide order dated 15.3.1990. He further submits that the order dated 30.6.1990 passed by the D.I.G. RAC in compliance to which the competent authority passed the order dated 17.7.1990, has been passed in violation of principle

of natural justice. The petitioner also submits that the fact of resignation under due pressure is no resignation and same will amount to termination and the same has not been considered by the respondents at the time of reconsideration the order of reinstatement dated 15.3.1990.

7. The Government Advocate has submitted that as per Rule 22-d of the Rules of 1951, the competent authority has no right to reconsider the matter.

8. Heard counsel for the parties and further considered record of the case as well as rival submission of the parties.

9. The relevant Rule 22 (d) of the Rules of 1951 is reproduced hereunder:-

> **22. Condition for drawing pay and allowances :-**
>
> **Government of Rajasthan Decisions**
>
> (a) .....
> (b) .....
> (c) .....
> (d) Authority competent to permit withdrawal of resignation – A resignation becomes effective when it is accepted and Government servant is relieved of his duties. When resignation has become effective, a Government servant ceases to be in Government service; and any request made subsequently for withdrawal of resignation shall not be entertained and considered.

10. A perusal of said Rule 22(d) of the Rules of 1951

would reveal that the same is applicable in the case of withdrawal of resignation after its acceptance by the competent authority and not higher authority and further the same does not relate to a case where resignation has been taken under pressure, which can only be decided by the higher authority.

11. In my view one of the point for consideration before the authority was with regard to the fact of undue pressure under which the resignation was given by the petitioner. The Deputy Inspector General of Police being the higher authority has rightly considered the said aspect. It appears that subsequently Rule 22-d of the Rules of 1951 has been given much weightage, which is applicable only for the competent authority. In the instant case, the competent authority is the Commandant, which is lower in grade and D.I.G. RAC is higher authority and both of them have not followed the principle of natural justice while passing the order dated 30.6.1990 and 17.7.1990. Therefore, the impugned order dated 30.6.1990 cannot be sustained and the order dated 17.7.1990 is quashed. Consequently, the petitioner is reinstated in service and D.I.G. RAC, Range Jaipur is directed to reconsider the issues

raised in the appeal after notice and hearing of the applicant as well as arrears of salary within a period of three months in accordance with law from the date of production of certified copy of this order.

12.Accordingly, the writ petition is disposed of.

(P.S. ASOPA) J.

ummed/-